

FINAL PRIVATE LETTER RULING

REQUEST LETTER

To Contact Writer:
E-MAIL
PHONE NUMBER

March 19, 2012

Tax Commission
Attn: Mr. R. Bruce Johnson, Commission Chair
210 North 1950 West
Salt Lake City, Utah 84134

RE: *Request for Letter Ruling on Sales Tax Exemption for Purchase of Irrigation Personal Property and Materials for the Irrigation Portion of the COMPANY 1 Company / TOWN 1 Project, COUNTY 1, Utah*

(Expedited Ruling Requested)

Dear Commissioners:

This firm represents the COMPANY 1 Company ("COMPANY"), a mutual non-profit irrigation Company located in COUNTY 1, Utah and TOWN 1 ("TOWN"), a political subdivision of the State of Utah and located in COUNTY 1. On behalf of COMPANY and TOWN, we respectfully request an advisory letter ruling on the sales tax exemption for the purchase of irrigation pipe under the "farming operations" exemption of the Utah Sales and Use Tax Act ("the Act"), Utah Code Ann. § 59-12-104(18)(a) (2011).

There are 4,528.8 shares of COMPANY 1 Company outstanding. Of those shares, 199 representing 4.4% are owned by TOWN 1 and used by the Town for culinary purposes. The remaining 4,329.8 shares are utilized in farming operations. The COMPANY and TOWN have acquired funding from the Army Corp of Engineers and the Utah Permanent Community Impact Fund Board for the construction and installation of a pipeline to replace the open canal and open ditches historically used by the COMPANY. The construction and installation of the pipeline will significantly improve the efficiency of the distribution system and significantly conserve water.

COMPANY and TOWN are purchasing a large amount of construction materials and irrigation infrastructure, including \$2,803,518.12 worth of 63 inch and 54-inch diameter HDPE piping, for improvement of the irrigation system that will be directly and primarily used in local farming operations. The current COMPANY irrigation system is antiquated. It is still, in large part, an open ditch un-pressurized system.

The COMPANY and TOWN are hereby requesting a sales tax exemption for the purchase of the pipeline and related accessories in an amount of \$180,911.02 calculated as follows: \$2,803,518.12 (pipe) x 6.75% = \$189,237.47 (total tax) x 95.6% (Company's interest in system) = \$180,911.02.

The Act provides an exemption for the “sale of tangible personal property . . . used or consumed primarily and directly in farming operations.” Utah Code Ann. § 59 12 104(18)(a) (2011). The COMPANY and TOWN acknowledge that the new pipeline will not be used exclusively for farming operations because 4.4% of the water shall be diverted to the TOWN for culinary use. However, it is our understanding that the exemption may apply even though the new pipeline will not be used exclusively for farming operations. The COMPANY requests that the cost of the pipe and related equipment attributable to farming operation should be exempt from sales tax (95.6% of the purchase).

In previous actions by the Commission in Private Letter Ruling 06-008, the Commission applied the exemption for the benefit of a mutual irrigation company for materials used to construct a water pipeline delivery system used for irrigation purposes.

The COMPANY and TOWN respectfully request that the tax exemption should be applied to the COMPANY’s share of the cost of the pipeline and related accessories to be used in the construction and installation of a pipeline which shall continue to be used for farming purposes (95.6%). The COMPANY and TOWN respectfully request that the Commission render an expedited ruling on this matter due to the fact that the construction and installation of the project has commenced.

The COMPANY and TOWN invite the Commission to contact either the President of the COMPANY or the TOWN 1 Mayor and Town Council if additional information is needed or the Commission has additional questions.

Yours very truly,

COMPANY 2

By
NAME 1

RKC:sb

cc: NAME 2, President COMPANY 1 Company
NAME 3, Mayor TOWN 1
Copies for 3 other Tax Commission Members

RESPONSE LETTER

May 31, 2012

Mr. NAME 1
COMPANY 2
ADDRESS
CITY, STATE ZIP CODE

RE: Private Letter Ruling Request–For Sales Tax Purposes, the Applicability of the Farming Operations Exemption Found in § 59-12-104(18) to Pipe Purchased by a Mutual Nonprofit Irrigation Company

Dear NAME 2:

You have requested a ruling on behalf of both COMPANY 1 Company (“Company”), which is a mutual nonprofit irrigation company located in COUNTY 1, Utah, and TOWN 1 (“Town”), a political subdivision of the State of Utah, also located in COUNTY 1.

You have explained that the shares of the Company are owned as follows:

95.6 % by owners using the water for farming operations
4.4 % by the Town, using the water for culinary purposes

You also explained that the Company and Town have commenced a project to upgrade the irrigation system (“Project”) by installing a new pipeline. You further explained that because the Company and Town will soon purchase a large amount of construction materials and irrigation infrastructure, they have requested a sales tax exemption of \$180,911.02, calculated as follows:

$\$2,803,518.12 \text{ (pipe)} \times 6.75\% = \$189,237.47 \text{ (total tax)} \times 95.6\% \text{ (Company's interest in system)}$

You explained that 4.4% of the water in the new pipeline will be delivered to the Town and the remaining 95.6% of the water will go to other owners for agricultural use.

You also mentioned the Commission’s prior Private Letter Ruling 06-008, in which the Commission granted an irrigation company the farming operations exemption.

On November 15, 2011, the Commission issued Private Letter Ruling 11-003 (“PLR 11-003”), a copy of which is enclosed and is also available online at <http://tax.utah.gov/commission/ruling/11-003.pdf>. In that ruling, a mutual nonprofit irrigation

company asked the Commission to apply the farming operations exemption to 71.5% of the purchase price of the pipe of an inlet pipeline because approximately 71.5 % of the water flowing through that pipeline would be used by local farmers for irrigation, while the remaining water would flow to another owner for industrial use. Based on the facts presented, the Commission ruled that the farming operations exemption applied to 100% of the purchase price of the pipe for the inlet pipeline. The Commission found that all of the inlet pipeline would be used directly and primarily in agriculture even though approximately 28.5% of the water would be delivered for a nonagricultural use.

The situation you presented is very similar to that for PLR 11-003; both involve constructing a pipeline to carry water primarily for agricultural use. Likewise, the Commission finds that the farming operations exemption applies to your pipeline just as that exemption applied to the inlet pipeline in PLR 11-003. Although your factual situation involves both the Company and the Town purchasing the pipeline for the Project, this fact does not affect the application of the farming operations exemption to the pipeline in your Project. Although, you proposed an exemption amount limited by the percentage of water delivered for only agricultural use, the Commission finds that your limitation is unnecessary. Instead, the farming operations exemption applies to all pipe purchased for the new pipeline because all of the new pipeline will be used directly and primarily for agriculture, not just 95.6%. In the Analysis section of PLR 11-003, the Commission explained why the exemption applies to 100% of the pipe purchased instead of to a lower percentage. In brief, however, that statute allows the exemption for “primary use” and does not require “exclusive use.”

In conclusion, all purchases of pipe for your Project qualify for the farming operations exception because the new pipeline will be used primarily and directly in farming. This ruling is based on current law and could be changed by subsequent legislative action or judicial interpretation. Also, our conclusions are based on the facts as described. Should the facts be different, a different conclusion may be warranted. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, you are welcome to contact the Commission.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
Enclosure: PLR 11-003

12-004